

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6213 of 1986

And

SPECIAL CIVIL APPLICATION No 6214 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE S.K.KESHOTE
and
Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : YES

UNION OF INDIA

Versus

NATWERLAL M BADIANI ADVOCATE

Appearance:

Mr.Mihir Thakore, senior counsel for
MR RP BHATT for Petitioners
MR NK MAJMUDAR for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE S.K.KESHOTE
and
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/2000

COMMON JUDGEMENT(C.A.V.)

(Per : MR.JUSTICE M.R.CALLA)

1. Special Civil Application No.6213 of 1986 was filed on 28.1.86 challenging the proceedings in the Civil Suit No.1196/86 and the Misc. Application No.234/86 filed therein in the Court of Civil Judge (S.D.), Jamnagar including an exparte injunction order dated 25.11.86 passed in the aforesaid proceedings. In Special Civil Application No.6214 of 1986 while challenging the proceedings in Misc. Application No.236/86 (in Civil Suit No.1197/86) in the court of Civil Judge (S.D.), Jamnagar including an exparte injunction order dated 25.11.86 passed in these proceedings a further declaration was sought that Civil proceedings cannot be instituted in any Civil Court in respect of search and seizure proceedings under S.132 of the Income-tax Act, 1961 and the jurisdiction of the Civil Court is barred; a further declaration was sought that the Civil Court is not even otherwise competent to entertain any such suit and grant any relief in respect of any proceedings under the Income Tax Act, 1961, coupled with the prayer that the proceedings in Misc. Application No.236/86 in the Court of Civil Judge (S.D.), Jamnagar including the order dated 25.11.86 passed therein may be set aside. On 2.12.86 Rule was issued and while issuing rule further proceedings in the respective pending suits were stayed.

2. Briefly stated the facts giving rise to the Special Civil Application No.6213/86 are that:-

(i) A warrant of authorisation under Sec.132 of the Income-tax Act, 1961 read with Rule 112(1) of the Income-tax Rules, 1962 was issued by the Director of Income-tax, Ahmedabad on 19.11.86 authorising Shri K.M.Varma and others to enter into the premises of the respondent, namely, Natwerlal M. Badiani, Advocate, Jamnagar and carrying on a search. Two separate warrants of authorization were issued; one for the search of the office premises and another in respect of residential premises.

(ii) Concerned Officers approached the premises

mentioned in the warrants of authorisation on 25.11.86 at 10.00 A.M. The respondent was found at his office premises and the respondent challenged the authorisation and entered into an argument with the concerned Officers to prevent them from carrying out the search. The search party contacted Deputy Director of Inspection (Investigation), who was camping at Jamnagar. The Deputy Director of Inspection (Investigation) personally went to the premises where the respondent was present but the respondent prevented the Officers from discharging their duties until 12.50 P.M. (Noon) when the order in question passed by the Civil Judge (S.D.), Jamnagar was produced. Simultaneously another raiding party, which went to the residential premises, was also prevented by the women of the respondent's family from carrying out its duties until 12.50 P.M. when they were informed that the Court had passed an order restraining the Income-tax Officers from entering into the premises and carrying out a search.

(iii) The search proceedings were stopped and the raiding party withdrew from both the premises.

3. With regard to the facts relating to Special Civil Application No.6214/86, it may be stated that a warrant of authorisation under Sec.132 of the Income-tax Act, 1961 read with Rule 112(1) of the Income-tax Rules, 1962 was issued by Deputy Director of Inspection, Ahmedabad on 25.11.86 authorising Shri K.M.Varma and others to enter into the premises of Shri Bhikhabhai Damodar Barai at Jamnagar and carry out necessary search and seizure proceedings. In pursuance of such authorisation, concerned Officers approached the premises mentioned in authorisation warrants on 25.11.86 in the morning at 10.00 A.M.. The respondent - Manjulaben (a relative of Shri Bhikhabhai) was found at the premises, she and other persons found at this premises were non co-operative. However, the search proceedings were started and some cash, jewellery, ornaments, etc. were found. During the course of search the summons was received at 7.50 P.M. by Shri K.M.Varma, ADI (Inv.) on 25.11.86 and in view of the service of court's order dated 25.11.86 passed by Civil Judge (S.D.), Jamnagar search proceedings were concluded and the raiding party withdrew from the premises, nothing was seized but the valuables found were sealed there itself and prohibitory order under Sec.132(3) was issued.

4. The proceedings in the respective Civil Suits Nos.1196/86 and 1197/86 and in the Misc.Applications Nos.234/86 and 236/86 filed therein respectively and the ex parte interim orders dated 25.11.86 passed therein in both the matters are under challenge in these two petitions as above.

5. In Special Civil Application No.6213/86 a Caveat dated 26.11.86 had been entered by Natwerlal M. Badiani and after the issue of the rule, an affidavit in reply dated 10.12.86 had been filed to which an affidavit in rejoinder dated 19.12.86 was filed.

6. In Special Civil Application No.6214/86 an affidavit in reply dated 10.12.86 was filed to which an affidavit in rejoinder dated 19.12.86 was filed.

7. When these two Special civil Applications came up before the Division Bench for hearing on 21.2.94 a question was raised that in view of the provisions of sub-section (2) of Sec.80 of the Civil Procedure Code no relief interim or otherwise could have been granted by the learned Civil Judge without giving the petitioners a reasonable opportunity of showing cause. For the purpose of interpretation of provisions of Sec.80, reliance was placed on the decision of the Privy Council in the case of Bhagchand Dagdusa Gujarathi v. Secretary of State for India, reported in AIR 1927 Privy council 176 and in the case of Ghanshyam Das v. Dominion of India, reported in AIR 1984 SC 1004.

8. Whereas there was divergence of opinion between the Judges in the Division Bench, the Court therefore framed the following question to be referred to a larger Bench:-

"Question: In suits to which the provisions of section 80 of Code of Civil Procedure are applicable, can the court grant ex-parte interim or ad- interim relief without giving reasonable opportunity of showing cause to the Government or a public officer, as the case may be?"

The Division Bench further opined that if the aforesaid question is replied in the negative, the entire petition may stand disposed of. Moreover, while deciding the aforesaid question, facts of each case will have to be examined, and therefore it will become necessary to examine other related aspects. Accordingly, it was thought proper to refer the entire petitions to larger

Bench and the Office was directed to place the matters before the Hon'ble Chief Justice. This is how these petitions have come up before us as ordered by Hon'ble Chief Justice on 24.4.2000.

9. In both these matters, the facts, which have not been denied and which are rather undeniable are as under:-

- (i) That both the suits were filed in the year 1986 without giving any notice under Sec.80 C.P.C.
- (ii) That in both the cases ex parte injunction orders were passed by the learned Civil Judge (S.D.), Jamnagar without issuing any notice or opportunity to the original defendants i.e. Union of India and DDI (Investigation) i.e. the Public Officer in the Income-tax Department of the Government of India.

In view of this factual position, we have to examine as to whether the Suit to which the provisions of Sec.80 of the C.P.C. are applicable, could the Court grant ex parte interim order or ad interim relief without giving reasonable opportunity of showing cause to the Government or a Public Officer.

10. If we trace to the history of Sec.80 of the C.P.C., Sec.80 as it stood before its adaption in 1937 by the Government of India Adaption of Indian Laws Order 1937 was as under:-

"80.No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

By the Civil Procedure (Amending) Act, 1963, (1) the words "including the Government of the State of Jammu and Kashmir", (2) Clause (bb) were inserted and (3) in clause (c) the words "any other" were substituted for

"a". By the Amendment Act, 1976, Sec.80 C.P.C. was re-structured and the original Section was renumbered as sub-section (1) and two new sub-sections (2) and (3) were inserted and in consequence the words "save as otherwise provided in sub-section (2)" in sub-sec.(1) were added and accordingly Sec.80 of the C.P.C. reads as under:-

"80.(1) Save as otherwise provided in sub-section
(2) no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to the Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with

the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit: Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-

(a) the name description and the residence of the plaintiff has been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

11. From the very language of the Section it is clear that the provisions of Sec.80 are mandatory and the giving of a notice under Sec.80 C.P.C. for institution of a suit against the Government or the Public Officer or in respect of any act purporting to be done by such Public Officer in his official capacity is a condition precedent or pre-requisite under Sec.80(1). However, under Sec.80(2) for obtaining an urgent or immediate relief against the Government or any Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity a Suit may be instituted with the leave of the Court without serving any notice required by sub-section (1), yet the requirement is that the Court shall not grant relief in the Suit whether interim or otherwise except after giving to the

Government or Public Officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the Suit. The provisions, as aforesaid, were in force in the year 1986 when the present Suits were filed and the orders granting ex parte injunction were passed.

12. While making reference vide its order dated 21.2.94 the Division Bench has referred to the decision of the Privy Council in the case of Bhagchand Dagdusa Gujarathi v. Secretary of State for India (Supra). In the case before the Privy Council, it was a common ground that the Suit was the one to which Sec.80 of the C.P.C. applied. But in the plaint it was averred that, "as the suit is for an injunction and as the defendants are about to recover the amount demanded in the notices soon, the suit is filed before the completion of the period of two months." Thus, it was a case in which notice under Sec.80 C.P.C. had been given but the suit was instituted before the expiration of the period of two months. The Privy Council noticed that for many years there had been a marked difference of opinion between High Court of Bombay on the one hand and all other High Courts in India, on the other, as to the true application of Sec.80 of C.P.C. (Act 5) of 1908 and Sec.424 of the Code (Act 10) of 1877, which it superseded in the case of suits against officials for acts purporting to be done in discharge of their duties, when part or the whole of the relief claimed is a perpetual injunction. The Privy Council also noticed that after some differences of opinion among their subordinate Courts, the High Courts of Calcutta, Madras and Allahabad had agreed in deciding that these sections are to be strictly complied with and are applicable to all forms of action and all kinds of relief. Certain cases were also referred in which the Suits were to restrain by injunction the commission of some official act prejudicial to the plaintiff, wherein it was held that if the immediate result of the Act would be to inflict irremediable harm, Sec.80 does not compel the plaintiff to wait for two months before bringing his suit, though, if nothing is to be apprehended beyond what payment of damages would compensate, the rule is otherwise and the Section applies. After considering various cases and the discussion on the point at the end of page 184 in column 2 and column 1 at page 185 the Privy Council held as under:-

"The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. S.80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which inter

alia an injunction is prayed is still "a suit" within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonable to suppose that the section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while S.80 is mere procedure, is fallacious, for S.80 imposes a statutory and unqualified obligation upon the Court."

13. The other case, which has been referred to by the Division Bench in the order dated 21.2.94 is Ghanshyam Dass v. Dominion of India (Supra). The Supreme Court in this case was considering Appeal on certificate brought from the judgment and decree of the Allahabad High Court dated February 26, 1965 reversing the judgment and decree of the Civil Judge, Agra dated August 25, 1952 and dismissing the plaintiffs' suit for recovery of Rs.26,000/- raising a question of some importance under Sec.80 of C.P.C., 1908. The plaintiffs father was a contractor, who had supplied charcoal to the Military. He claimed additional amount in terms of escalation clause in the Agreement and issued notice under Sec.80 of the C.P.C. to the Government but the claim was denied. He died before the institution of the Suit and his sons then filed the Suit without issuing another fresh notice under S.80 C.P.C. The trial court had held that no further notice under S.80 was necessary and the notice issued by the plaintiffs father enured to the benefits of the plaintiffs. This decision was reversed by the High Court. The Supreme Court held that no fresh notice was necessary and the notice already served enured to their benefits. In this decision the Supreme Court has observed that the Privy Council and the Supreme Court have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the suit. The Supreme Court has adopted the rule of substantial compliance in dealing with the requirement that there must be identity between the cause of action and the reliefs claimed in the notice as well as in the plaint. It has been held that notice under this Section should be held to be sufficient if it substantially fulfils its object of informing the parties concerned of the nature of the suit to be filed. On this principle, it has been held that though the terms of the section have to be

strictly complied with, that does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation. The decision of the Privy Council in the case of Bhagchand v. Secretary of State (Supra) has been considered in para 5 and in Para 22 of this Judgment, after noticing the amendments made in Sec.80 of the C.P.C. by the amending Act of 1976, which came into force from 1.2.77 that such a change has a Legislative acceptance of the rule of substantial compliance laid down by the Supreme Court in Dhian Singh Sobha Singh, reported in AIR 1958 SC 274, and Raghunath Dass's case reported in AIR 1969 SC 674, it has been observed that as observed in Dhian Singh Sobha Singh's case (Supra), one must construe Sec.80 with some regard to common sense and to the object with which it appears to have been enacted. The decision in S.N.Dutt v. Union of India, reported in AIR 1961 SC 1449, was not found to be in accordance with the view expressed in this Judgment and was, therefore, over ruled. In para 23 of the Judgment the Supreme Court has further observed as under:-

"It has frequently come to our notice that the strict construction placed by the Privy Council in Bhagchand's case, (AIR 1927 PC 176) supra, which was repeatedly reiterated in subsequent cases, has led to a peculiar practice in some Courts. Where urgent relief is necessary, the practice adopted is to file a suit without notice under Section 80 and obtain interim relief and thereafter to serve a notice, withdraw the suit and institute a second suit after expiry of the period of the notice. We have to express our strong condemnation of this highly objectionable practice. We expect that the High Courts will take necessary steps to put a stop to such practice."

14. Mr. Mihir Thakore has submitted that apart from the provisions of S.80 CPC even under Order 39 Rule 3 of the C.P.C., it is necessary to give notice of the Application to the opposite party before granting any injunction. Exception has been made only when it appears to the court that the object of granting injunction would be defeated by the delay. However, we find that this exception, as has been made in Order 39 Rule 3 in the First Schedule of the Code cannot undo the effect of the special provisions made under Sec.80 of the CPC i.e. Part IV "Suits in particular cases, Suits by or against the Government or Public Officers in their official

capacity" and, therefore, even the exception, as may be made in Suits other than the Suits by or against the Government or Public Officers in their official capacity, cannot be made available in cases where S.80 CPC is applicable and it admits of no controversy that in cases of the Suits where S.80 is applicable, even if the suit is instituted with the leave of the Court without notice under S.80(1) of C.P.C., the obligation of giving notice to the Government or Public Officers, as the case may be, and a reasonable opportunity of showing cause in respect of the relief prayed for in the Suit before granting any relief, interim or otherwise, cannot be done away and the notice or opportunity has to be given to the other side before granting any sort of relief, interim or otherwise, in cases of Suits where S.80 C.P.C. is applicable.

15. In the case of N.V. Ashar v. State of Gujarat, reported in 1984(2) GLR 1333, a decision rendered by single Bench of this Court, it was held that the only consideration at the time of granting leave without serving statutory notice under S.80(1) of C.P.C. is whether the suit for obtaining urgent and immediate relief against the Government. It is the urgency or immediate nature of the relief which would be relevant for deciding whether leave should be granted or not and not whether the plaintiff has good case for obtaining such immediate and urgent relief by way of interim order. Merely because the interim relief is refused on merits, it cannot be said that there was no urgent or immediate need for interim relief in the suit. When the leave is granted, there is no question of the Court reviewing the grant of leave or returning the plaint and the Court having once satisfied about the urgency, the requirement of statutory notice fades into total insignificance and the suit has to be tried as any other suit and merely because the interim relief is refused, the leave granted and the suit instituted will not become incompetent. However, we find that in the facts of the case before us no such leave was granted by the court and without granting the leave ex parte ad interim injunction order was granted and that too without giving any notice or affording any opportunity to the other side. According to us this case has no relevance for the purpose of the consideration of the question, as has been referred to us, and we also find that the view taken by the learned single Judge in this case does not appear to be the correct view in face of the proviso to Sec.80(2) of the C.P.C. Even if the leave is granted for institution of the suit without notice under S.80(1) of the C.P.C. on the question of urgent and immediate relief, if the Court is satisfied after hearing the parties, which would

include both the sides, that no urgent or immediate relief may be granted in the Suit, it has to return the plaint for presentation to it after complying with the requirements of sub-section (1). The question of returning the plaint arises only when the Court is satisfied after hearing both the sides that there is no need for any urgent or immediate relief and this stage cannot be reached unless the leave is granted for institution of the Suit and, therefore, the mere grant of leave for institution of suit for the purpose of considering the question as to whether the urgent or immediate relief is needed or not, does not become a fait accompli for the purpose of dispensing with the requirement of notice under S.80(1) of the C.P.C. and it is very clear from the plain reading of the language of the proviso to S.80(2) of C.P.C. that after hearing both the sides if the Court is satisfied that no urgent or immediate relief need be granted in the suit, the plaint has to be returned for presentation after complying with the requirements of sub-section (1) of Sec.80 C.P.C. The words used in the proviso are that "the Court shall" and thus the proviso is mandatory in nature and, therefore, in our opinion, even if the Court grants leave on being satisfied about the urgency, but after hearing both the sides it comes to the conclusion that no urgent or immediate relief is required to be granted, it has to return the plaint and it is not open for the Court to try the suit as any other suit once the interim relief is refused and the leave granted automatically comes to an end, if the Court is satisfied that no urgent or immediate relief is needed. It will be pertinent to mention that at the time when the leave is granted to institute a Suit and the urgency is determined, the Court only hears the plaintiff and not the other side. But after the grant of leave, whether urgent and immediate relief is to be granted or not, is a question which is decided after hearing both the sides. The proviso also speaks of the satisfaction of the Court for not granting urgent and immediate relief after hearing both the sides and, therefore, only after the grant of the leave the stage is there for returning of the plaint and Court shall return the plaint if it is satisfied after hearing the parties that no urgent or immediate relief may be granted. On this aspect of the matter, the view in the case of N.V.Ashar (Supra) is not found to be correct view in face of the proviso to Sec.80(2) of C.P.C. and the same is hereby overruled.

16. In the case of State of Tripura v. Sajal Kanti Sengupta, reported in AIR 1982 Gauhati 76, the Court considered the question of granting ex parte temporary

injunction as an interim relief in a suit against a Public Officer by invoking inherent powers under Sec.151 of the C.P.C. The Court found that where there are provisions for dealing with certain matters in the Code, resort to the inherent powers of the Court overriding those provisions is prohibited. It was further held that in view of Sec.80(2) of the C.P.C. if an urgent or immediate relief has to be given to the plaintiff in a suit against the Government or Public Officer, the provisions of sub-section (1) of Sec.80 C.P.C. can be dispensed with; but if after hearing both the parties the court comes to the finding that no urgent or immediate relief need be granted in this suit, the plaint will be returned for compliance with the requirements of sub-section (1) and, therefore, even in the matter of urgent or immediate relief, interim or otherwise, the Court cannot dispense with the requirement of giving an opportunity of showing cause in respect of the relief prayed for in the suit to other party. It was held that the provision was mandatory and it cannot be bypassed inasmuch as the urgency/immediacy of the relief, interim or otherwise, are sufficiently dealt with under the provisions and thus the Court had no reason to travel beyond these provisions and invoke the provisions of Sec.151 C.P.C. in order to defeat the provisions and their purpose under sub-section (2) of Sec.80 of C.P.C. We find ourselves to be in respectful agreement with the view taken by the High Court of Gauhati in this case.

17. In the case of State of Orissa v. Ganeshjew Mahapravu, reported in AIR 1986 Orissa 134, it was held by the Court in no uncertain terms that while making a relaxation for entertaining a suit for injunction without a notice under Sec.80(1) C.P.C., Legislature has made it amply clear that no relief by interim order or otherwise can be granted in such a suit without hearing the other side.

18. On consideration of the various cases, as aforesaid, and in face of the plain and clear language of Sec.80(2) of the C.P.C. and for the reasons, as above, the conclusion is irresistible and we have no hesitation in holding that in case of Suits, to which the provisions of Sec.80 C.P.C. are applicable, even if the Suit is instituted with the leave of the Court, the Court cannot grant ex parte interim or ad interim relief without giving reasonable opportunity of showing cause to the Government or Public Office, as the case may be, and the question, which has been referred by the Division Bench, is answered accordingly.

19. Mr. N.K.Majmudar appearing on behalf of the respondents while citing a decision of the single Bench of this Court in the case of Amtrax Appliances Ltd. v. The Sarpanch, Karannagar Gram Panchayat, reported in 1996(1) GLH 461, submitted that the grounds on which the order granting ex parte injunction by the Civil Court had been challenged by way of filing these Petitions before this Court could be very well agitated before the same Court by the present petitioners and, therefore, these Special Civil Applications should not be entertained. We find that the facts in the case of Amtrax Appliances Ltd. (Supra) are entirely different. The petitions had been filed seeking a direction against the Panchayat to consider the Application for fixing lumpsum amount in lieu of all or any of the taxes and in particular the octroi to be paid by the petitioner to the Panchayat and to desist from collecting any octroi until the decision is taken on that application. The contract had been given under Resolution passed by the Gram Panchayat to collect the octroi, such Resolution was temporarily stayed by the D.D.O., who directed that the Octroi should not be collected until further orders. It was, thereafter, that the regular Civil Suit was filed by the Contractor in the Mehsana Court of Civil Judge (S.D.) against the order of the D.D.O. The petition was, therefore, sought to be amended by challenging the order made by the Civil Judge (S.D.), Mehsana on Application Exh.5 for interim relief whereby an ad interim relief was granted staying the operation of the order of the D.D.O. In the backdrop of these facts, the contention was raised that the Suit had been filed without serving the requisite notice under S.270(2) of the Gujarat Panchayats Act, 1993 and, therefore, the Civil Court could not have entertained the suit and granted ad interim relief in the matter. In this context, the Court considered the case of Bihari Chowdhary v. State of Bihar, reported in AIR 1984 SC 1043 in the context of the provisions of Sec.80 of C.P.C. and also considered yet another case of Mohd. Yunus v. Mohd. Mustaqim, reported in AIR 1984 SC 38 and while referring to Para 6 of the decision of the Supreme Court in the case of Mohd. Yunus v. Mohd. Mustaqim (Supra) it was noticed that while dealing with the question as to the exercise of jurisdiction of the High Court under Article 227 of the Constitution of India against an order of the Civil Court, which could have been challenged by way of Appeal from Order before the District Court, it was held that the High Court had no jurisdiction to interfere with such orders passed by the subordinate Judge under Article 227 of the Constitution of India and the petition under Article 227 of the Constitution in such cases was wholly misconceived. The

single Bench thus held that when it was open to the petitioner to go before the concerned Court and raise all the contentions, which they were now seeking to raise, to enable that Court to take appropriate decision and it will not be appropriate for this court to entertain the challenge against an ad interim relief order passed by the Civil Court in exercise of its jurisdiction under Article 227 of the Constitution. This case is clearly distinguishable not only on facts but also in law because in the present case it is not only a question of challenge to the ex parte ad interim order passed by the Civil Court. In the instant case, the proceedings in the Civil Suit as a whole are in question and it was not a case of simple challenge to the order of the Civil Court, which could have been challenged by way of Appeal. The challenge is to the proceedings and the very institution of the Suit and in any case, we find that even if the petitioners herein could agitate such grounds before the Civil Court, there is no bar against entertaining such petitions challenging any order passed by the Civil Court when it is passed without jurisdiction or in invalid exercise of jurisdiction and defeats the mandatory provisions in the Code. This decision, therefore, in our opinion, does not help the respondents so as to throw away the petitions, which have been pending in this Court since 1986 on the said ground.

20. Mr.N.K.Majmudar also cited the decision of the Supreme Court in the case of Loknath Padhan v. Birendra Kumar Sahu, reported in AIR 1974 Supreme Court 505 and submitted that the matter is of 1986 and that the issue is purely academic and that unless there is an effective and living issue between the parties, the Court should not decide the same. In the case of Loknath Padhan (Supra) pending Appeal against the decision in an election petition the Assembly itself had been dissolved and it was in this context that the Supreme Court took the view that the Assembly having been dissolved during the pendency of the Appeal and there being no allegation of corrupt practice in the election petition, it was wholly academic to consider whether the respondent i.e. elected candidate was disqualified under S.9A of the Representation of the People Act on the date of the nomination and that since that was the only ground on which the election of the respondent was challenged, the Court found that it will be futile to decide the Appeal on merits. In the case at hand, it is not the case of the respondents before us that the Suit which had been filed by them had been withdrawn or that it has already been decided and, therefore, it cannot be said that the question is only of academic importance or that it will

be a case of exercise in futility or that there is no effective or living issue between the parties. Even otherwise we find that the question is a question of law of great importance, as the question with regard to the grant of interim relief in the Suits filed against Government or Public Officers without notice under S.80(1) of C.P.C. is often raised before the trial court in large number of cases and, therefore, the question, as has been referred to the larger Bench by the Division Bench, as a question of law has to be answered and orders have to be passed accordingly and in no way it can be said that it is a case of futile exercise and only of academic importance.

21. Besides this on behalf of the petitioners it was also submitted that there was a total ban of the suits in Civil Court under Sec.293 of the Income Tax Act, 1961 which is reproduced as under:-

"293. Bar of suits in civil courts.- No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act."

22. In the case at hand, Civil Suits have been filed and entertained against the Public Officers while they were acting under the warrant of authorisation under S.132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules and ex parte ad interim order was passed. Sec.293 of the Income Tax Act in terms creates a bar of Suits in Civil Court in such matters against action of the Public Officer under warrant of authorisation under Sec.132 of the Income Tax Act and it is certainly a proceeding taken or order made under the Income Tax Act and Sec.293 in terms says that no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act. In the case of C.I.T. v. Parmeshwari Devi Sultania, reported in (1998) 3 SCC 481 the Supreme Court held that substance and not the form of the Suit is to be seen and where a certain asset was seized during search and rejecting the assessee's plea that the same included the shares of his brothers and sisters, the ITO passed an order under S.132(5) determining the tax liabilities and directing the asset to be retained by the department and the suit filed at the instance of the assessee for partition of that very asset was held not to be

maintainable. It is, therefore, clear that in the facts of the present case also the suits were clearly barred by the provisions of Sec.293 of the Income Tax Act and the Civil Court had no jurisdiction to entertain the suit against the proceedings for search and seizure, which were being taken under Sec.132 of the Income Tax Act, 1961 read with Rule 112(1) of the Income Tax Rules, 1962.

23. The upshot of the aforesaid discussion is that the question referred by the Division Bench vide its order dated 21.2.94 stands answered as in Para 18. Whereas the entire petitions have been referred as per the last part of the order dated 21.2.94 making reference, we find that both these petitions deserve to be allowed and accordingly we allow both these Special Civil Applications and the entire proceedings in both the Civil suits i.e. Civil Suit No.1196/86 and Civil Suit No.1197/86 including the proceedings and the Misc. Application No.234/86 and Misc. Application No.236/86 therein respectively in the Court of Civil Judge (S.D.), Jamnagar are declared to be illegal and without jurisdiction; both the Suits are hereby dismissed, both the Misc. Applications, as above, are hereby rejected and the ex parte injunction orders dated 25.11.86 passed in each of these two matters are also set aside. Rule is made absolute accordingly in each of these two Petitions. No order as to costs.

(M.R.Calla,J)

(S.K.Keshote,J)

(D.C.Srivastava,J)